



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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November 19, 2007

TECHNICAL STAFF REPORT

*Petition Accepted on November 7, 2007
Planning Board Meeting of December 6, 2007
County Council Hearing to be scheduled*

Case No./Petitioner: ZRA-93 – Marsha S. McLaughlin, Director

Request: To revise Section 102.B. of the Violations, Enforcement, and Penalties section to state that citations of violations of the Zoning Regulations are enforceable in court or by administrative proceedings, and to specify that zoning violations issued by the Department of Planning and Zoning under the provisions of Section 102.B. cannot be appealed using the process specified in Section 130.A.3. of Section 130: Hearing Authority regulations.

Department of Planning and Zoning Recommendation:

APPROVAL

I. BACKGROUND AND DESCRIPTION OF PROPOSAL

- **Currently, the legal authorization concerning the enforcement of the Zoning Regulations is specified in two locations; a very short reference in Section 16.209 of the County Code, and a slightly longer description in the one-page Section 102 of the Zoning Regulations.**

Copies of both sections are attached to this Technical Staff Report. The descriptions given in these two sections do not provide much detail about the actual processes that are followed when the Department of Planning and Zoning takes action on a violation of any provision of the Zoning Regulations.

A very generalized explanation of how a typical violation case is managed under current procedures is that after there is a formal complaint filed about an alleged zoning violation and there is a finding that such a violation does exist, there is first official notification to both the entity directly responsible for the violation and, if different, the property owner; then a deadline is established to allow for the clearance of the violation without further penalty; then, if that deadline is passed, a new deadline is established, with warnings of fines and/or further legal action used to urge compliance; then, such fines and actions are ultimately imposed if there is a continued refusal to come into compliance.

- **While the current procedures have always been satisfactory in cases when the notified entity chooses to come into compliance readily and relatively quickly, there are recognized shortcomings in cases when a notified entity chooses to dispute the violation or to deliberately delay bringing the property into compliance.**

I. BACKGROUND AND DESCRIPTION OF PROPOSAL (continued)

- **Common, repeated concerns about the current zoning enforcement procedures are that in a contested case when a notified entity challenges the violation, the process to effect compliance and clear the violation can go on for extended periods of time, and also that the issue which brought about the initial complaint, be it an improper structure or use or activity on a property, can remain or be continued during this entire extended process.**

One of the principal reasons causing delays to eliminating a violation is the current appeal process. Any person accused of breaking a law, including a zoning law, must, of course, be afforded the right to appeal that accusation. Under the current procedures, that first appeal is to the Hearing Examiner, but if the Hearing Examiner denies the appeal, the appellant may still appeal that decision to the Board of Appeals.

That appeal to the Board of Appeals is on a de novo basis; the case is essentially re-heard and is not based on the record established in the hearing before the Hearing Examiner. In effect, an appellant has two separate “tries” within the County appeal process to achieve the desired answer. And then, the person challenging the violation may still continue the appeal in the court system.

- **Once an appeal is brought into the court system, or in cases when the County is bringing a violation case into court to try and obtain an order to further compel compliance, another difficulty can be encountered by the County; the judge may have a lack of interest or concern with the matters related to zoning.**

If one considers the fundamental nature of typical zoning violation cases in relation to the many types of cases judges can often hear, this is understandable. Compared to cases involving theft, assault, illegal drugs, family law issues, and even many traffic law violations, a zoning violation case for an improperly placed structure or for junk vehicles can be seen to have considerably less negative impact on the issues of public safety and public welfare.

- **Under current procedures, a violation can be continued or remain during the entire appeal process because there are no effective means to compel an abatement or to have a violation physically removed or eliminated from a property.**
- **In a determined effort to correct certain shortcomings of the current violation enforcement process, and to improve the pace and effectiveness of the process, a comprehensive legislative bill amending the County Code for these purposes is soon to be introduced.**

The principal part of this new legislation involves the creation of a new Subtitle 16, titled Enforcement of the Howard County Subdivision and Land Development Regulations and the Zoning Regulations, although there are other related components within the entire intended bill (the “Enforcement Bill”). This Zoning Regulation Amendment case is related to, but is not an actual part of the proposed Enforcement Bill amendments. The Enforcement Bill does concern violations of the Subdivision and Land Development Regulations too, but for simplicities sake, this report only refers to violations of the Zoning Regulations.

I. BACKGROUND AND DESCRIPTION OF PROPOSAL (continued)

- **For the purpose of explaining how ZRA-93 is related to the Enforcement Bill, it is necessary to describe a few of the intended procedural changes sought by the Enforcement Bill.**

The Enforcement Bill would establish appeal procedures for citations of zoning violations that are distinctly separate from the standard appeal procedures currently in place that are based on the provision in the Zoning Regulations. One significant improvement would be that any appeal to the Board of Appeals of a Hearing Examiner decision will be an appeal on the record. This will strengthen the decision of the Hearing Examiner in these matters.

The Hearing Examiner would be authorized to have new powers in deciding cases on zoning violations. Cases in which the notified entity is thought to be cooperating on achieving compliance would proceed similarly to the current process, but after a citation for a zoning violation is issued, an uncooperative notified party can be required to appear before the Hearing Examiner, who would then decide on an outcome of the citation case.

If the notified entity is ultimately found to be in violation, the Hearing Examiner may require the abatement of the violation, including a requirement to stop work or restore the property to a lawful condition; may require the notified entity to reimburse the County for fees and/or costs; and may impose civil fines.

- **There are many other aspects of the Enforcement Bill that will improve the enforcement process, such as giving the County the ability to obtain a court order to enter a property and remove or correct a violation, with costs recoverable through liens on the property [informally known as “Clean and Lien”], but these are not directly related to the issue of ZRA-93.**
- **After this very detailed background information, ZRA-93 is quite uncomplicated in terms of purpose and structure. The principal purpose is to specify that a notice of a violation of the regulations cannot be appealed using the provisions of Section 130.A.3 of the Zoning Regulations, which is typically called the Administrative Appeal process.**

Appeals would be subject to the provisions and procedures of the new Enforcement Bill amendments to the County Code instead. ZRA-93 also includes new text which notes in a similar manner as some statements within the Enforcement Bill provisions, that the Department of Planning and Zoning has the authority to issue citations to enforce the Zoning Regulations, which may then be heard in court or in administrative hearings.

In essence, ZRA-93 replaces the provisions and procedures governing the enforcement of the regulations from those now stated in the Zoning Regulations to those that will be established in the County Code by the Enforcement Bill.

- **The amendment text is attached as Exhibit A (CAPITALS indicates text to be added).**

II. EXISTING REGULATIONS

- Some elements of the current Section 103.B. concerning the issue of enforcement were in place in the 1977 Zoning Regulations, but its current form was first established with amendments to the 1985 Zoning Regulations in Zoning Board Case No. 882R in 1989. ZB 882R was a significant revision of the entire Zoning Regulations initiated by the Department of Planning and Zoning.

III. BACKGROUND INFORMATION

A. Scope of Proposed Amendment

- The amendment would be applicable to all enforcement cases involving the issuance of a citation for any violation of the provisions or requirements in the Zoning Regulations.

B. Agency Comments

- No comments were received to date from the following agencies:
 1. Department of Recreation & Parks
 2. Bureau of Environmental Health
 3. Department of Fire and Rescue Services
 4. Department of Inspections, Licenses and Permits

IV. EVALUATIONS AND CONCLUSIONS

A. Relation to the General Plan

- The amendment is in harmony with the Community Conservation and Enhancement Policy 5.8 to “Establish the tools needed to implement community conservation and revitalization programs”, and specifically its action concerning Code Enforcement to “Increase the effectiveness of County Code enforcement, especially in areas where community conservation is an issue. Encourage homeowners and business associations to enforce existing covenants.”

B. Relation to the Zoning Regulations

- In association with the Enforcement Bill provisions to become part of the County Code, ZRA-93 will significantly improve and update the process of enforcing all aspects of the Zoning Regulations. By strengthening the Zoning Regulations in this manner, ZRA-93 is in harmony with all of the multiple legislative intent statements of Section 100.A of the Zoning Regulations.

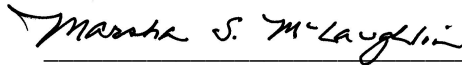
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V. RECOMMENDATION *APPROVAL*

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-93 as noted above, be APPROVED.



Marsha S. McLaughlin, Director

11/20/07

Date

MM/JRL/jrl

NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.

ZRA 93 – EXHIBIT A

Section 102.B.

(Text that is in **CAPITALS** is to be added:)

B. Enforcement

Upon becoming aware of any violation of these regulations, the Department of Planning and Zoning may institute an injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove such erection, construction, alteration, enlargement, conversion or use in violation of any of the provisions of these regulations. The Department of Planning and Zoning may give notice that activities on the premises are in violation of the Zoning Regulations and may order an end to these activities within 10 days, or a reasonable specified time. The Department of Planning and Zoning shall serve the notice personally, or by Registered Mail addressed to the premises of the violation, or to the person or corporation committing or permitting the violations, or by posting the premises. If the violation does not cease within the time specified by the Department of Planning and Zoning, the Department of Planning and Zoning shall take whatever action necessary to end the violation. **A NOTICE OF VIOLATION ISSUED UNDER THIS SECTION IS NOT APPEALABLE PURSUANT TO SECTION 130.A.3. OF THESE REGULATIONS.**

THE DEPARTMENT OF PLANNING AND ZONING MAY ENFORCE THE ZONING REGULATIONS BY ISSUING CITATIONS TO ALLEGED VIOLATORS TO BE HEARD IN COURT OR IN ADMINISTRATIVE PROCEEDINGS AS PROVIDED BY LAW.

Any person who is aggrieved by an alleged violation of these regulations may request in writing that the Department of Planning and Zoning issue a Zoning Violation Notice. If the Department does not issue such a notice within 60 days of receiving the written request, such failure shall be considered to be a final decision of the Department that the alleged violation does not exist, and the complaining person shall have a right to appeal such decision to the Board of Appeals, provided that such petition of appeal is filed with the Clerk of the Board of Appeals within 30 days after such failure to issue such Zoning Violation Notice. If such an appeal is taken, the Department of Planning and Zoning shall send a copy of the petition to the owner and occupant of the premises.

The remedies provided for herein are cumulative and not exclusive, and shall be in addition to any other remedies provided by law.

Current Section 16.209 of the County Code:

Sec. 16.209. Enforcement.

The director of planning and zoning or the director's duly authorized representative may enter upon open land where the violation allegedly exists or has occurred. Any violation of the rules, regulations and restrictions adopted pursuant to this subtitle shall be a misdemeanor punishable by a fine not to exceed \$100. Alternatively or in addition to and concurrent with all other remedies, the department of planning and zoning may enforce the provisions of this subtitle with civil penalties pursuant to the provisions of title 24, "Civil Penalties," of the Howard County Code. A violation shall be a Class B offense.

(C.B. 3, 1969; C.B. 38, 1973; C.B. 105, 1980; C.B. 32, 1985; C.B. 107, 1994)

The Enforcement Bill Revisions to Section 16.209 of the County Code:

Section 16.209. Enforcement.

The director of planning and zoning or the director's duly authorized representative may enter upon open land where the violation allegedly exists or has occurred. Any violation of the rules, regulations and restrictions adopted pursuant to this subtitle shall be a misdemeanor punishable by a fine not to exceed \$100. Alternatively or in addition to and concurrent with all other remedies, the department of planning and zoning may enforce the provisions of this subtitle with civil penalties pursuant to the provisions of title 24, "Civil Penalties," of [[the Howard County]] THIS Code AND SUBTITLE 16 OF THIS TITLE. A violation shall be a Class B offense UNDER TITLE 24 OF THIS CODE OR AN OFFENSE SUBJECT TO A FINE IN THE AMOUNT SET FORTH IN SECTION 16.1608 OF THIS TITLE.

SECTION 102: Violations, Enforcement, and Penalties

A. Violations

Any structure erected, constructed, altered, enlarged, converted, moved or used contrary to any of the provisions of these regulations by any person taking such action, or permitting such action, and any use of any land or any structure which is conducted, operated or maintained by any person using, or permitting the use thereof, contrary to any of the provisions of these regulations, shall be, and the same is hereby declared to be unlawful.

B. Enforcement

Upon becoming aware of any violation of these regulations, the Department of Planning and Zoning may institute an injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove such erection, construction, alteration, enlargement, conversion or use in violation of any of the provisions of these regulations. The Department of Planning and Zoning may give notice that activities on the premises are in violation of the Zoning Regulations and may order an end to these activities within 10 days, or a reasonable specified time. The Department of Planning and Zoning shall serve the notice personally, or by Registered Mail addressed to the premises of the violation, or to the person or corporation committing or permitting the violations, or by posting the premises. If the violation does not cease within the time specified by the Department of Planning and Zoning, the Department of Planning and Zoning shall take whatever action necessary to end the violation.

Any person who is aggrieved by an alleged violation of these regulations may request in writing that the Department of Planning and Zoning issue a Zoning Violation Notice. If the Department does not issue such a notice within 60 days of receiving the written request, such failure shall be considered to be a final decision of the Department that the alleged violation does not exist, and the complaining person shall have a right to appeal such decision to the Board of Appeals, provided that such petition of appeal is filed with the Clerk of the Board of Appeals within 30 days after such failure to issue such Zoning Violation Notice. If such an appeal is taken, the Department of Planning and Zoning shall send a copy of the petition to the owner and occupant of the premises.

The remedies provided for herein are cumulative and not exclusive, and shall be in addition to any other remedies provided by law.

C. Penalties

Failure to comply with the Zoning Regulations shall be a misdemeanor punishable by a fine not to exceed 100 dollars. Every day that such violation continues shall be a separate offense.

Alternatively or in addition to and concurrent with all other remedies, the Department of Planning and Zoning may enforce the provisions of the Zoning Regulations with civil penalties pursuant to the provisions of Title 24 "Civil Penalties" of the Howard County Code. A violation shall be a Class B offense.

D. Permits

No permit shall be issued for the construction, alteration or use of any structure or lot unless such construction, alteration or use and the related site improvements conform to all requirements of these regulations.

ZRA 93 – EXHIBIT A

Section 102.B.

(Text that is in **CAPITALS** is to be added:)

B. Enforcement

Upon becoming aware of any violation of these regulations, the Department of Planning and Zoning may institute an injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove such erection, construction, alteration, enlargement, conversion or use in violation of any of the provisions of these regulations. The Department of Planning and Zoning may give notice that activities on the premises are in violation of the Zoning Regulations and may order an end to these activities within 10 days, or a reasonable specified time. The Department of Planning and Zoning shall serve the notice personally, or by Registered Mail addressed to the premises of the violation, or to the person or corporation committing or permitting the violations, or by posting the premises. If the violation does not cease within the time specified by the Department of Planning and Zoning, the Department of Planning and Zoning shall take whatever action necessary to end the violation. **A NOTICE OF VIOLATION ISSUED UNDER THIS SECTION IS NOT APPEALABLE PURSUANT TO SECTION 130.A.3. OF THESE REGULATIONS.**

THE DEPARTMENT OF PLANNING AND ZONING MAY ENFORCE THE ZONING REGULATIONS BY ISSUING CITATIONS TO ALLEGED VIOLATORS TO BE HEARD IN COURT OR IN ADMINISTRATIVE PROCEEDINGS AS PROVIDED BY LAW.

Any person who is aggrieved by an alleged violation of these regulations may request in writing that the Department of Planning and Zoning issue a Zoning Violation Notice. If the Department does not issue such a notice within 60 days of receiving the written request, such failure shall be considered to be a final decision of the Department that the alleged violation does not exist, and the complaining person shall have a right to appeal such decision to the Board of Appeals, provided that such petition of appeal is filed with the Clerk of the Board of Appeals within 30 days after such failure to issue such Zoning Violation Notice. If such an appeal is taken, the Department of Planning and Zoning shall send a copy of the petition to the owner and occupant of the premises.

The remedies provided for herein are cumulative and not exclusive, and shall be in addition to any other remedies provided by law.

Zoning Regs and Subdivision Regs - DRAFT

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council Of Howard County, Maryland

2008 Legislative Session

Legislative Day No.

Bill No. _____-2008

Introduced by: The Chairperson at the request of the County Executive

AN ACT adding certain procedures to enforce the subdivision and land development regulations and the Howard County Zoning Regulations; defining certain terms; providing for certain authority of the County and the Hearing Examiner; providing requirements for Notices of Violation and Citations; setting forth a hearing process; allowing certain inspections; requiring certain final orders and setting forth civil fines; providing for appeals to the Board of Appeals; requiring certain security; providing certain penalties for failure to comply; and generally related to the enforcement of the subdivision and land development regulations and the Howard County Zoning Regulations.

Introduced and read first time _____, 2008. Ordered posted and hearing scheduled.

By order _____
Sheila M. Tolliver, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2008.

By order _____
Sheila M. Tolliver, Administrator

This Bill was read the third time on _____, 2008 and Passed ____, Passed with amendments ____, Failed ____.

By order _____
Sheila M. Tolliver, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2008 at ____ a.m./p.m.

By order _____
Sheila M. Tolliver, Administrator

Approved/Vetoed by the County Executive _____, 2008

Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

Section 1. Be It Enacted by the County Council of Howard County, Maryland, that new subsection (g) is added to Section 2.202 "Petitions" of Subtitle 2 "Rules of Procedure of the Board of Appeals" of Title 2 "Administrative Procedure" of the Howard County Code to read as follows:

Title 2. Administrative Procedure.

Subtitle. Rules of Procedure of the Board of Appeals.

Section 2.202. Petitions.

(G) *REFUND OF SECURITY. AFTER ALL APPEALS ARE EXHAUSTED, SECURITY POSTED UNDER SECTION 16.1610 OF THIS CODE MAY BE REFUNDED IN ACCORDANCE WITH THAT SECTION.*

Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland, that Section 16.106 "Enforcement" of Subtitle 1 "Subdivision and Land Development Regulations" of Title 16 "Planning, zoning and subdivisions and land development regulations" of the Howard County Code is amended to read as follows:

Title 16. Planning, Zoning and Subdivisions and Land Development Regulations.

Subtitle 1. Subdivision and Land Development Regulations.

Section 16.106. Enforcement.

(a) *In Violation of Approved Plan or Failure to have Approved Plan:* If property is developed, used, or maintained in violation of or without obtaining an approved final plan or site development plan, the County shall institute appropriate action to compel compliance. In addition to and concurrent with all other remedies, the County may enforce the provisions of an approved final plan or site development plan with civil penalties pursuant to the provisions of Title 24, "Civil Penalties," of this Code AND SUBTITLE 16 OF THIS TITLE. A violation shall be a Class B offense UNDER TITLE

24 OF THIS CODE OR AN OFFENSE SUBJECT TO A FINE IN THE AMOUNT SET FORTH IN SECTION 16.1608 OF THIS TITLE.

Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland, that Section 16.209 “Enforcement of Subtitle 2 “Zoning” of Title 16 “Planning, zoning and subdivisions and land development regulations” of the Howard County Code is amended to read as follows:

Title 16. Planning, Zoning and Subdivisions and Land Development Regulations.
Subtitle 2. Zoning.

Section 16.209. Enforcement.

The director of planning and zoning or the director's duly authorized representative may enter upon open land where the violation allegedly exists or has occurred. Any violation of the rules, regulations and restrictions adopted pursuant to this subtitle shall be a misdemeanor punishable by a fine not to exceed \$100. Alternatively or in addition to and concurrent with all other remedies, the department of planning and zoning may enforce the provisions of this subtitle with civil penalties pursuant to the provisions of title 24, "Civil Penalties," of [[the Howard County]] THIS Code AND SUBTITLE 16 OF THIS TITLE. A violation shall be a Class B offense UNDER TITLE 24 OF THIS CODE OR AN OFFENSE SUBJECT TO A FINE IN THE AMOUNT SET FORTH IN SECTION 16.1608 OF THIS TITLE.

Section 4. And Be It Further Enacted by the County Council of Howard County, Maryland, that Section 16.301 “ Jurisdiction of hearing examiner”, subsection (a) of Section 16.303 “Hearing examiner procedures”, and Section 16.304 “Appeal to board of appeals” of Subtitle 3 “Board of Appeals” of Title 16 “ Planning, zoning and subdivisions and land development regulations” of the Howard County Code are amended to read as follows:

Title 16. Planning, Zoning and Subdivisions and Land Development Regulations.

Subtitle 3. Board of Appeals.

Section 16.301. Powers.

The Howard County Board of Appeals shall have the following zoning powers:

(a) To authorize a variance from the terms of the zoning regulations as is necessary to avoid arbitrariness and to obtain substantial justice within the spirit of the zoning regulations. However, the County Council, by passage of a resolution after public hearing, shall be the sole authority to grant these variances for governmental uses of land.

(b) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the application, interpretation, or enforcement of this title or of any regulations adopted pursuant to it.

(c) To authorize uses provided by the zoning regulations. However, the County Council, by passage of a resolution after public hearing, shall be the sole authority to issue special use variances for governmental uses of land.

(D) TO HEAR CITATIONS ISSUED, UNDER SUBTITLE 16 OF THIS TITLE, FOR A VIOLATION OF THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS SET FORTH IN SUBTITLE 1 OF THIS TITLE OR THE HOWARD COUNTY ZONING REGULATIONS.

Section 16.303. Hearing examiner procedures.

(a) EXCEPT FOR A CITATION ISSUED UNDER SUBTITLE 16 OF THIS TITLE, A [[A]] hearing conducted by a hearing examiner will comply with the notice and advertising requirements of section 2.203 of this Code, as amended.

Section 16.304. Appeal to board of appeals.

(a) A person aggrieved by a decision of a hearing examiner may, within 30 days of the issuance of the decision, appeal the decision to the board of appeals. UNLESS THE APPEAL IS OF A CITATION ISSUED UNDER SUBTITLE 16 OF THIS TITLE, [[The]] THE board will hear the appeal de novo in accordance with § 2.209 or § 2.210(a) of the Code, as amended, as applicable. THE BOARD WILL HEAR THE APPEAL OF

1 A CITATION ISSUED UNDER SUBTITLE 16 OF THIS TITLE ON THE RECORD IN
2 ACCORDANCE WITH SECTION 2.210(B) OF THIS CODE.

3 (b) On filing of the appeal, the hearing examiner will promptly transmit the entire record
4 or a certified copy of the record to the board of appeals and notify the parties of this
5 action.

6 (c) The person filing the appeal will bear the expense of providing notice of and
7 advertising the hearing.

8
9 *Section 5. And Be It Further Enacted by the County Council of Howard County,*
10 *Maryland, that new Subtitle 16 “Enforcement of the Howard County Subdivision and*
11 *Land Development Regulations and the Zoning Regulations” is added to Title 16 “*
12 *Planning, zoning and subdivisions and land development regulations” of the Howard*
13 *County Code to read as follows:*

14
15 **Title 16. Planning, zoning and subdivisions and land development regulations.**
16 **SUBTITLE 16. ENFORCEMENT OF THE HOWARD COUNTY SUBDIVISION**
17 **AND LAND DEVELOPMENT REGULATIONS AND THE**
18 **ZONING REGULATIONS.**

19
20 **SECTION 16.1600. DEFINITIONS.**

21 TERMS IN THIS SUBTITLE HAVE THE MEANINGS INDICATED:

22 (A) “ALLEGED VIOLATOR” MEANS A PERSON TO WHOM A CITATION OR
23 NOTICE OF VIOLATION HAS BEEN ISSUED FOR AN ALLEGED VIOLATION OF
24 THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS SET FORTH IN
25 SUBTITLE 1 OF THIS TITLE OR THE HOWARD COUNTY ZONING
26 REGULATIONS.

27 (B) “CITATION” MEANS A CITATION FOR A VIOLATION OF THE
28 SUBDIVISION AND LAND DEVELOPMENT REGULATIONS SET FORTH IN
29 SUBTITLE 1 OF THIS TITLE OR THE HOWARD COUNTY ZONING
30 REGULATIONS ISSUED UNDER SECTION 16.1603 OF THIS SUBTITLE.

(C) “DIRECTOR” MEANS THE DIRECTOR OF THE DEPARTMENT OF
PLANNING AND ZONING OR THE DIRECTOR’S DESIGNEE.

(D) “NOTICE OF VIOLATION” MEANS A NOTICE OF VIOLATION ISSUED
UNDER SECTION 16.1602 OF THIS SUBTITLE FOR A VIOLATION OF THE
SUBDIVISION AND LAND DEVELOPMENT REGULATIONS SET FORTH IN
SUBTITLE 1 OF THIS TITLE OR THE HOWARD COUNTY ZONING
REGULATIONS

**SECTION 16.1601. AUTHORITY OF THE COUNTY; NATURE OF
EQUITABLE RELIEF.**

(A) *COUNTY AUTHORITY.* IN ADDITION TO ANY OTHER REMEDY
AUTHORIZED BY LAW, THE COUNTY MAY:

- (1) ENFORCE THE SUBDIVISION AND LAND DEVELOPMENT
REGULATIONS SET FORTH IN TITLE 1 OF THIS SUBTITLE AND
THE HOWARD COUNTY ZONING REGULATIONS IN
ACCORDANCE WITH THE PROCEDURES SET FORTH IN THIS
SUBTITLE;
- (2) ABATE A VIOLATION OF THE SUBDIVISION AND LAND
DEVELOPMENT REGULATIONS SET FORTH IN TITLE 1 OF THIS
SUBTITLE OR THE HOWARD COUNTY ZONING REGULATIONS
AS PROVIDED IN THIS SUBTITLE; AND
- (3) MAINTAIN AN ACTION IN A COURT OF COMPETENT
JURISDICTION FOR AN IN JUNCTION; OR
- (4) FILE A PETITION FOR EQUITABLE RELIEF IN THE DISTRICT
COURT.

(B) *NATURE OF EQUITABLE RELIEF.* THE COUNTY MAY REQUEST THE
COURT TO:

- (1) ENJOIN A VIOLATION;
- (2) REQUIRE THE RESTORATION OF A PROPERTY, TO THE EXTENT
POSSIBLE, TO ITS CONDITION BEFORE THE VIOLATION,

1 INCLUDING THE REMOVAL OF THE SOURCE OF THE
2 VIOLATION; AND

- 3 (3) ORDER OTHER RELIEF AS MAY BE NECESSARY TO REMEDY A
4 VIOLATION.

5
6 **SECTION 16.1602. NOTICE OF VIOLATION.**

7 (A) *DUTY TO INVESTIGATE.* THE DIRECTOR SHALL INVESTIGATE AN
8 ALLEGED VIOLATION TO DETERMINE WHETHER A VIOLATION EXISTS OR
9 HAS OCCURRED.

10 (B) *AUTHORITY TO ISSUE NOTICE OF VIOLATION.* AFTER INVESTIGATION,
11 IF THE DIRECTOR BELIEVES THAT A VIOLATION OF THE SUBDIVISION AND
12 LAND DEVELOPMENT REGULATIONS SET FORTH IN SUBTITLE 1 OF THIS
13 TITLE OR THE HOWARD COUNTY ZONING REGULATIONS EXISTS OR HAS
14 OCCURRED, THE DIRECTOR MAY ISSUE A NOTICE OF VIOLATION TO THE
15 ALLEGED VIOLATOR.

16 (C) *NO REQUIREMENT TO ISSUE.* THE DIRECTOR IS NOT REQUIRED TO ISSUE
17 A NOTICE OF VIOLATION:

- 18 (1) FOR A REPEATED VIOLATION FOR WHICH A CITATION UNDER
19 SECTION 16.1603 OF THIS SUBTITLE HAS BEEN ISSUED; OR
20 (2) IF A NOTICE OF VIOLATION IS NOT REQUIRED BY LAW OR
21 REGULATION.

22 (D) *CONTENTS OF NOTICE OF VIOLATION.* A NOTICE OF VIOLATION:

- 23 (1) SHALL BE IN WRITING;
24 (2) SHALL DESCRIBE WITH PARTICULARITY THE NATURE OF THE
25 VIOLATION AND THE MANNER OF ABATEMENT;
26 (3) SHALL INCLUDE A REASONABLE TIME TO ABATE THE
27 VIOLATION OR PREVENT FUTURE VIOLATIONS;
28 (4) MAY INCLUDE AN ORDER TO STOP WORK AND ABATE ANY
29 VIOLATIONS; AND

(5) SHALL INCLUDE A STATEMENT THAT FAILING TO COMPLY WITH THE NOTICE MAY RESULT IN ONE OR ALL OF THE FOLLOWING:

(I) CIVIL PENALTIES; AND

(II) A LIEN ON THE PROPERTY FOR CIVIL PENALTIES AND COSTS OF COMPLIANCE IF THE COUNTY CORRECTS THE VIOLATION.

(E) *SERVICE OF NOTICE OF VIOLATION*. A NOTICE OF VIOLATION SHALL BE SERVED IN ONE OF THE FOLLOWING METHODS:

(1) PERSONAL SERVICE;

(2) CERTIFIED OR REGISTERED MAIL, RESTRICTED DELIVERY, RETURN RECEIPT REQUESTED;

(3) FIRST CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE ALLEGED VIOLATOR; OR

(4) WHEN SERVICE CANNOT BE OBTAINED BY ONE OF THESE METHODS, A COPY OF THE NOTICE OF VIOLATION MAY BE POSTED IN A CONSPICUOUS PLACE ON THE PROPERTY.

(F) *TIME FOR CORRECTION*. AN ALLEGED VIOLATOR SHALL MAKE THE CORRECTION WITHIN THE TIME REQUIRED BY THE NOTICE OF VIOLATION.

(G) *NOTICE OF VIOLATION NOT APPEALABLE*. AN ALLEGED VIOLATOR MAY NOT APPEAL A NOTICE OF VIOLATION ISSUED UNDER THIS SECTION.

SECTION 16.1603. CITATION.

(A) *AUTHORITY TO ISSUE*. THE DIRECTOR MAY ISSUE A CITATION TO AN ALLEGED VIOLATOR:

(1) AFTER THE ISSUANCE OF A NOTICE OF VIOLATION IF THE VIOLATION CONTINUES AFTER THE REASONABLE TIME STATED IN THE NOTICE OF VIOLATION HAS PASSED; OR

(2) IF LAW OR REGULATION DOES NOT REQUIRE THE ISSUANCE OF A NOTICE OF VIOLATION, WHEN THE DIRECTOR DETERMINES THAT VIOLATION OF THE SUBDIVISION AND

LAND DEVELOPMENT REGULATIONS SET FORTH IN SUBTITLE
1 OF THIS TITLE OR THE HOWARD COUNTY ZONING
REGULATIONS EXISTS OR HAS OCCURRED.

(B) *CONTENT OF CITATION*. A CITATION SHALL:

- (1) BE IN WRITING;
- (2) INCLUDE CERTIFICATION BY THE INSPECTOR, ATTESTING TO
THE BEST OF THE INSPECTOR'S KNOWLEDGE THAT A
VIOLATION EXISTS OR HAS OCCURRED;
- (3) CONTAIN THE NAME AND ADDRESS OF THE ALLEGED
VIOLATOR;
- (4) DESCRIBE IN PARTICULARITY THE NATURE OF THE
VIOLATION, INCLUDING A REFERENCE TO THE CODE OR
COUNTY PROVISION THE VIOLATOR HAS ALLEGEDLY
VIOLATED;
- (5) CONTAIN THE TIME WHEN THE VIOLATION OCCURRED AND
THE PLACE;
- (6) INCLUDE ANY FINE TO BE ASSESSED INCLUDING A
STATEMENT THAT A LIEN MAY BE PLACED ON THE PROPERTY
FOR CIVIL FINES AND COSTS OF COMPLIANCE IF THE COUNTY
CORRECTS THE VIOLATION; AND
- (7) CONTAIN THE MANNER, LOCATION, AND TIME IN WHICH A
FINE MAY BE PAID.

(C) *SERVICE OF CITATION*. A CITATION SHALL BE SERVED IN THE SAME
MANNER AS A NOTICE OF VIOLATION AS SET FORTH IN SECTION 16.1602(E)
OF THIS SUBTITLE.

(D) *DIRECTOR TO RETAIN COPY*. THE DIRECTOR SHALL RETAIN A COPY OF
A CITATION.

**SECTION 16.1604. AUTHORITY OF THE HEARING EXAMINER; BOARD OF
APPEALS.**

1 (A) *AUTHORITY*. THE HEARING EXAMINER SHALL CONSIDER A CITATION
2 ISSUED UNDER THIS SUBTITLE FOR A VIOLATION OF THE SUBDIVISION
3 AND LAND DEVELOPMENT REQUIREMENTS SET FORTH IN SUBTITLE 1 OF
4 THIS TITLE OR THE HOWARD COUNTY ZONING REGULATIONS.

5 (B) *BOARD OF APPEALS*. THE HEARING EXAMINER HAS ALL OF THE
6 POWERS AND AUTHORITY OF THE BOARD OF APPEALS AS SET FORTH IN:

7 (1) TITLE 2, SUBTITLE 2 OF THIS CODE; AND

8 (2) SUBTITLE 3 OF THIS TITLE, INCLUDING THE AUTHORITY TO
9 ISSUE SUBPOENAS UNDER SECTION 16.303 OF THIS TITLE.

10
11 **SECTION 16.1605. HEARING.**

12 (A) *HEARING SCHEDULED*. THE HEARING EXAMINER SHALL SCHEDULE A
13 HEARING ON A CITATION ISSUED UNDER SECTION 16.1603 OF THIS
14 SUBTITLE.

15 (B) *PROCEDURES*. A HEARING UNDER THIS SUBTITLE SHALL BE HELD IN
16 ACCORDANCE WITH THE PROCEDURES SET FORTH IN SECTION 2.210(A)
17 AND SECTION 16.303 OF THIS CODE.

18 (C) *NOTICE*. NOTICE OF A HEARING SHALL BE SERVED IN THE SAME
19 MANNER AS A NOTICE OF VIOLATION AS SET FORTH IN SECTION 16.1602(E)
20 OF THIS SUBTITLE.

21 (D) *BURDEN OF PROOF*. IN AN APPEAL OF A CITATION ISSUED UNDER
22 SECTION 16.1603 OF THIS SUBTITLE, THE BURDEN OF PROOF IS ON THE
23 COUNTY TO SHOW, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE
24 ALLEGED VIOLATOR HAS VIOLATED THE LAWS OR REGULATIONS IN
25 QUESTION. HOWEVER, IT IS THE ALLEGED VIOLATOR'S BURDEN TO
26 PROVE ALL AFFIRMATIVE DEFENSES, INCLUDING THE DEFENSE OF
27 NONCONFORMING USE.

28
29 **SECTION 16.1606. INSPECTIONS.**

30 ON REQUEST OF AN ALLEGED VIOLATOR, THE DIRECTOR SHALL:

(A) MAKE ANY MATERIAL OR INFORMATION IN THE CUSTODY OF THE COUNTY AVAILABLE TO THE ALLEGED VIOLATOR; AND

(B) ALLOW THE ALLEGED VIOLATOR TO INSPECT AND COPY:

(1) ANY PORTION OF A DOCUMENT THAT CONTAINS A STATEMENT OR THE SUBSTANCE OF A STATEMENT MADE BY THE ALLEGED VIOLATOR TO AN INSPECTOR THAT THE INSPECTOR INTENDS TO USE AT A HEARING; AND

(2) EACH WRITTEN REPORT OR STATEMENT MADE BY AN EXPERT WHOM THE INSPECTOR EXPECTS TO CALL AS A WITNESS AT THE HEARING.

SECTION 16.1607. FINAL ORDER

(A) *REQUIREMENT TO ISSUE.* AFTER THE CONCLUSION OF A HEARING, THE HEARING EXAMINER SHALL ISSUE A WRITTEN FINAL ORDER.

(B) *CONTENTS.* A FINAL ORDER MAY INCLUDE:

(1) A REQUIREMENT TO ABATE A VIOLATION INCLUDING A REQUIREMENT TO STOP WORK OR RESTORE THE PROPERTY TO A LAWFUL CONDITION;

(2) A REQUIREMENT TO REIMBURSE THE COUNTY FOR ANY FEES OR COSTS INCURRED; AND

(3) A CIVIL FINE IN ACCORDANCE WITH SECTION 16.1608. OF THIS SUBTITLE.

SECTION 16.1608. CIVIL FINES.

(A) *AMOUNT OF FINE.* A CIVIL FINE FOR A VIOLATION OF THE OF THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS SET FORTH IN SUBTITLE 1 OF THIS TITLE OR THE HOWARD COUNTY ZONING REGULATIONS SHALL BE \$250 OR MORE PER VIOLATION AND SHALL NOT EXCEED \$500 PER VIOLATION.

1 (B) *BASIS FOR FINE*. A FINE IMPOSED UNDER THIS SUBTITLE IS WITHIN
2 THE DISCRETION OF THE HEARING EXAMINER AND MAY NOT BE GROSSLY
3 DISPROPORTIONAL TO THE GRAVITY AND SEVERITY OF THE OFFENSE.

4 (C) *PAYMENT OF FINE*. ALL FINES:

5 (1) ARE DUE AND PAYABLE BY THE DATE INDICATED IN THE
6 CITATION; AND

7 (2) ARE PAYABLE TO THE DIRECTOR OF FINANCE OF HOWARD
8 COUNTY.

9 (D) *CONTINUING VIOLATIONS*. EACH DAY THAT A VIOLATION CONTINUES
10 AFTER THE ISSUANCE OF A NOTICE OF VIOLATION OR CITATION IS A
11 SEPARATE OFFENSE AND AN INSPECTION THAT INDICATES THAT A
12 VIOLATION CONTINUES TO EXIST IS PRIMA FACIE PROOF OF A
13 CONTINUING VIOLATION.

14 (E) *DEFERRAL OR CONDITIONS OF FINE*. THE HEARING EXAMINER MAY
15 SUSPEND OR DEFER ASSESSMENT OF THE FINE OR MAY SET CONDITIONS
16 FOR THE SUSPENSION OR DEFERRAL OF THE FINE.

17
18 **SECTION 16.1609. APPEAL TO THE BOARD OF APPEALS.**

19 (A) *APPEAL*. A FINAL ORDER ISSUED BY THE HEARING EXAMINER MAY BE
20 APPEALED BY THE ALLEGED VIOLATOR TO THE BOARD OF APPEALS IN
21 ACCORDANCE WITH SECTION 16.304 OF THIS TITLE.

22 (B) *PENALTIES STAYED*. IF AN ALLEGED VIOLATOR APPEALS THE FINAL
23 ORDER OF THE HEARING EXAMINER, THE ALLEGED VIOLATOR MAY
24 REQUEST THE STAY OF ANY CIVIL FINE IMPOSED BY A FINAL ORDER
25 PENDING THE FINAL RESOLUTION OF AN APPEAL.

26
27 **SECTION 16.1610. SECURITY.**

28 (A) *SECURITY*. IF A FINAL ORDER OF THE HEARING EXAMINER INCLUDES
29 A CIVIL FINE AND THE ORDER IS APPEALED TO THE BOARD OF APPEALS,
30 THE ALLEGED VIOLATOR SHALL POST SECURITY IN THE AMOUNT OF THE
31 CIVIL FINE TO THE DIRECTOR IN A FORM ACCEPTABLE TO THE DIRECTOR.

(B) *REFUND OF SECURITY*. AFTER ALL APPEALS ARE EXHAUSTED, IF A CIVIL FINE:

(1) IS REDUCED OR VACATED:

(I) THE SECURITY SHALL BE REDUCED PROPORTIONATELY;

(II) ANY SURPLUS SHALL BE RETURNED TO THE ALLEGED VIOLATOR; AND

(III) ANY BALANCE SHALL BE USED TO SATISFY THE CIVIL FINE; OR

(2) IS NOT REDUCED OR VACATED, THE SECURITY SHALL SATISFY THE FINE ASSESSED AND ACCRUE TO THE BENEFIT OF THE COUNTY.

SECTION 16.1611. FAILURE TO COMPLY WITH A FINAL ORDER.

(A) *FAILURE TO PAY*. IF A FINAL ORDER ISSUED BY A HEARING EXAMINER ASSESSES A CIVIL FINE AND THE ALLEGED VIOLATOR DOES NOT PAY THE FINE WITHIN THE TIME REQUIRED BY THE ORDER, THE HEARING EXAMINER SHALL CERTIFY TO THE DIRECTOR OF FINANCE THE AMOUNT OWED THAT SHALL:

(1) BECOME A LIEN ON THE PROPERTY ON WHICH THE VIOLATION EXISTED; AND

(2) BE COLLECTED IN THE MANNER PROVIDED FOR THE COLLECTION OF REAL ESTATE TAXES.

(B) *COUNTY TO COMPLETE WORK- COURT ORDER*. IF AN ALLEGED VIOLATOR FAILS TO COMPLY WITH A FINAL ORDER OR AN ORDER OF THE BOARD OF APPEALS ISSUED PURSUANT TO SECTION 2.211 OF THIS CODE, THE COUNTY MAY SEEK A COURT ORDER AUTHORIZING ENTRY ONTO THE PROPERTY TO CORRECT THE VIOLATION IN ACCORDANCE WITH SECTION 16.1612 OF THIS SUBTITLE.

SECTION 16.1612. COUNTY TO SECURE COMPLIANCE.

1 (A) *NOTICE*. NOTICE THAT THE COUNTY MAY UNDERTAKE MEASURES
2 PROVIDED FOR IN SUBSECTION (B) OF THIS SECTION SHALL BE INCLUDED
3 IN:

- 4 (1) AN ORDER OF ABATEMENT;
- 5 (2) AN INJUNCTION OR OTHER ORDER FOR EQUITABLE RELIEF
6 ISSUED BY THE COURT;
- 7 (3) A FINAL ORDER ISSUED BY THE HEARING EXAMINER; OR
- 8 (4) AN ORDER OF THE BOARD OF APPEALS AFFIRMING OR
9 MODIFYING A FINDING OF THE HEARING EXAMINER.

10 (B) *COUNTY TO SECURE COMPLIANCE*. SUBJECT TO THE NOTICE
11 REQUIREMENTS SET FORTH IN SUBSECTION (A) OF THIS SECTION, IF AN
12 ALLEGED VIOLATOR FAILS TO COMPLY WITH AN ORDER TO CORRECT A
13 VIOLATION WITHIN THE TIME PROVIDED IN THE ORDER, THE COUNTY
14 MAY SEEK A COURT ORDER AUTHORIZING ENTRY ONTO THE PROPERTY
15 TO CORRECT THE VIOLATION AND MAY PROCURE THE PERFORMANCE OF
16 THE WORK BY COUNTY EMPLOYEES OR BY CONTRACT TO CORRECT THE
17 VIOLATION.

18 (C) *COST*. THE COST AND EXPENSE OF WORK PERFORMED UNDER THIS
19 SECTION SHALL BE:

- 20 (1) CERTIFIED TO THE DIRECTOR OF FINANCE;
- 21 (2) IF APPLICABLE, A LIEN ON THE PROPERTY ON WHICH THE
22 VIOLATION EXISTS; AND
- 23 (3) COLLECTIBLE:
 - 24 (I) IN THE MANNER PROVIDED FOR THE COLLECTION OF
25 REAL PROPERTY TAXES; OR
 - 26 (II) IN THE SAME MANNER AS ANY CIVIL MONEY
27 JUDGMENT OR DEBT MAY BE COLLECTED.

28 (D) *LIABILITY*. WORK PERFORMED BY OR FOR THE COUNTY UNDER THIS
29 SECTION DOES NOT RELIEVE THE ALLEGED VIOLATOR FROM
30 RESPONSIBILITY OR LIABILITY FOR ANY WORK PERFORMED BY THE

1 ALLEGED VIOLATOR OR FOR A VIOLATION COMMITTED BY THE ALLEGED
2 VIOLATOR.

3 (E) *AUTHORITY TO ENTER PROPERTY*. IN ACCORDANCE WITH A COURT
4 ORDER, A COUNTY EMPLOYEE OR CONTRACTOR AUTHORIZED BY THE
5 COUNTY MAY ENTER ON PRIVATE LANDS FOR THE PURPOSE OF
6 CORRECTING A VIOLATION.

7 (F) *PROHIBITED CONDUCT*. AN OWNER, OCCUPANT, OR AGENT MAY NOT
8 OBSTRUCT OR IMPEDE ANY EMPLOYEE OR CONTRACTOR OR THEIR
9 AGENTS OR EMPLOYEES IN THE PERFORMANCE OF WORK UNDER THIS
10 SECTION
11

12 *Section 6. And Be It Further Enacted by the County Council of Howard County,*
13 *Maryland, that new subsection VI is added to Section 24.103 “Applicability;*
14 *nonexclusive remedy” of Subtitle 1 “Civil fines and procedures” of Title 24 “Civil*
15 *Penalties” of the Howard County Code is amended to read as follows:*
16

17 **Title 24. Civil Penalties.**

18 **Subtitle 1. Civil Fines and Procedures.**
19

20 **Section 24.103. Applicability; nonexclusive remedy.**

21 *IV. NONAPPLICABILITY TO VIOLATIONS OF THE SUBDIVISION AND LAND*
22 *DEVELOPMENT REGULATIONS OR THE HOWARD COUNTY ZONING*
23 *REGULATIONS. THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO*
24 *CITATIONS OR NOTICES OF VIOLATION ISSUED UNDER TITLE 16, SUBTITLE*
25 *16 OF THIS CODE.*
26

27 *Section 7. And Be It Further Enacted by the County Council of Howard County,*
28 *Maryland, that this Act shall become effective 61 days after its enactment.*